



**DEPARTMENT OF CORRECTIONS
YOUTH COMMUNITY CORRECTIONS BUREAU
POLICY**

Policy No.: YCC 1.3.52	Subject: OFFENDER ABUSE / MISTREATMENT
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Section 3: Personnel	Revision Date: 01-09-06, 11-06-06
Signature: /s/ Karen Duncan	Effective Date: 09-15-2004

I. POLICY:

The Youth Community Corrections Bureau prohibits offender abuse and mistreatment. The Bureau has a zero tolerance policy regarding offender abuse, mistreatment, and sexual misconduct with an offender. To ensure the safety of the youth under parole supervision, all suspected incidents of child abuse or neglect shall be reported immediately to the statutorily designated authority. If law permits, the Bureau Chief shall initiate a thorough investigation and administer appropriate disciplinary actions that may include suspension, dismissal and/or criminal prosecution.

II. AUTHORITY:

<i>51-1-203, MCA</i>	<i>Powers and Duties of Department of Corrections</i>
<i>41-3-201, MCA</i>	<i>Reporting Child Abuse and Neglect</i>
<i>45-5-201, MCA</i>	<i>Assault</i>
<i>45-5-204, MCA</i>	<i>Mistreating Prisoners</i>
<i>45-5-502, MCA</i>	<i>Sexual assault</i>
<i>45-5-501, MCA</i>	<i>Definitions</i>
<i>45-5-503, MCA</i>	<i>Sexual Intercourse without Consent</i>

III. DEFINITIONS:

Abuse - actual physical or psychological harm to a child; substantial risk of physical or psychological harm to a child; or abandonment. The term includes: (a) actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare; or (b) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful clandestine laboratory, as prohibited by 45-9-132.

Harassment - to annoy continually; harry, plague, pester, tease, tantalize because of a person's race, color, national origin, age, physical or mental disability, marital status, religion, creed, sexual orientation or political beliefs. Per ARM 2.21.4013, harassment may also include: (a) coercion of employees, clients, or customers in the participation or non-participation in religious activities; or (b) ethnic slurs, repeated jokes, innuendoes, or other verbal or physical conduct because of a person's nationality, race, color, age, physical or mental disability, marital status, religion, creed, sexual orientation or political beliefs if these actions create an intimidating, hostile or offensive working environment.

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Mistreatment - While being responsible for the care or custody of an offender, the person purposely or knowingly: (a) assaults or otherwise injures an offender; (b) intimidates, threatens, endangers, or withholds reasonable necessities from the offender with the purpose to obtain a confession from the offender or for any other purpose; or (c) violates any civil right of an offender. Refer to 45-5-204, MCA.

Physical Abuse - an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

Sexual Abuse - the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

Sexual Assault - Per 45-5-502, MCA, a person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault. 45-5-502, MCA, section (5) (a) further clarifies: (5) Consent is ineffective under this section if the victim is incarcerated in an adult or juvenile correctional, detention, or treatment facility and the perpetrator is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search.

Sexual Contact - includes, but is not limited to, all forms of sexual contact, intentional sexual touching or physical contact in a sexual manner, either directly or through clothing, of the genitalia, anus, groin, breasts, inner thighs, buttocks, with or without the consent of the person; or any unwanted touching with intent to arouse, humiliate, harass, degrade, or gratify the sexual desire of any person. [Note: agencies should consider developing specific policy to guide staff regarding: touching, hugging, kissing, fondling, etc. between staff and offenders. Policy for volunteers and private contractors should also be defined.]

Sexual Harassment - includes unwelcome verbal or physical conduct of a sexual nature when: (a) submission to the conduct is implicitly or explicitly made a term or condition of employment; (b) submission to or rejection of the conduct is used as the basis for an employment decision affecting the individual; or (c) the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment also includes harassment directed toward a person because of gender, a pattern of sexual favoritism, or harassment because of a person's sexual orientation. Examples of prohibited sexual harassment include, but are not limited to: (a) propositions or pressure to engage in sexual activity; (b) sexual assault; (c) repeated intentional body contact; (d) repeated sexual jokes, innuendoes, or comments; (e) constant staring or leering; (f) inappropriate

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comments concerning appearance; (g) display of magazines, books, pictures, or electronic documents with a sexual connotation; (h) a pattern of hiring or promoting sex partners over more qualified persons; or (i) any harassing behavior, whether or not sexual in nature, directed toward a person because of the person's gender including, but not limited to, hazing employees working in nontraditional work environments.

Sexual Intercourse without Consent - is designated in 45-5-503, MCA as a person who knowingly has sexual intercourse without consent with another person.

Sexual Misconduct - Any behavior of a sexual nature perpetrated by an employee toward an individual referenced in item d. below, that includes acts or attempts to commit such acts as: (a) sexual assault; (b) sexual abuse; (c) sexual harassment; (d) sexual contact of the genitals, breasts, or other intimate body parts; (e) conduct of a sexual nature or implication; (f) obscenity and unreasonable invasion of privacy; or, (g) conversations or correspondence that suggests a romantic or sexual relationship; *such relationships or acts, regardless of whether they are considered to be consensual by the offender, are strictly prohibited. No offender under the authority, supervision, care or custody of the Department has the ability to give consent to sexual relationships*

Sexual misconduct is not gender-specific and may include all four of the following gender combinations: (a) male to male; (b) male to female; (c) female to female; (d) female to male.

Inappropriate or offensive sex or gender-based conduct is specifically prohibited and includes such prohibited conduct as: (a) sexual advances, propositions, or flirtations; (b) requests or pressure of any kind for sexual favors, activities, or contact; (c) sexually explicit, graphic, abusive, degrading, intimidating, or offensive language or jokes; (d) physical contact or touching of a sexual nature, including physical or sexual assault; (e) display, circulation, or communication of any sexually suggestive, explicit, graphic, or offensive objects, pictures, or materials of any kind

Sexual misconduct includes acts, described above, perpetrated by an employee toward the following individuals: (a) offenders under the care, custody, or supervision of the Department; (b) offenders' victims; (c) individuals referenced in Section IV of this policy who have contact with the Department on behalf of the offender including contractors, collateral contacts, volunteers, visitors, family members, employers, friends, and service or treatment providers; (d) any other agency representatives working in an official capacity.

IV. PROCEDURES:

A. Child Abuse Notification:

All staff members who know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a youth is abused or neglected shall report the matter promptly to the Bureau Chief or designee. The Bureau Chief or designee shall promptly notify the Department of Public Health and Human Services, its local affiliate, and the local county attorney. Any person who has reasonable

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cause to suspect "child abuse or neglect" shall take appropriate action as outlined by State statute.

B. Reports, Observations or Incidents:

All reports, observations or incidents of "child abuse or neglect" shall immediately be referred to the Bureau Chief or designee. The Bureau Chief or designee will notify the Department of Public Health and Human Services, Child Protective Office and the County Attorney in the pertinent region. Following consultation with the Department of Public Health and Human Services and the appropriate County Attorney's Office, a decision will be made as to the method and course of investigation, in accordance with State law.

Reporting of abuse or neglect cases is mandatory on the part of Department of Corrections' employees. Report to the YCC Bureau Chief the dates, names, places and factual information as possible.

C. Medical Assessment:

Immediate medical assessment and treatment by medical provider will be facilitated for any youth reported to have been physically abused.

D. Reporting:

1. All alleged instances of abuse or mistreatment must be submitted in writing to the Division Administrator's Office for review and forwarded to the Director and shall include:
 - a. a description of the alleged abuse or mistreatment;
 - b. a summary of the findings and conclusions of the investigation; and
 - c. disciplinary action proposed/taken, if any.
2. If an investigation proves that an employee had knowledge of another employee abusing, mistreating, sexually assaulting or engaging in sexual intercourse with an offender and did not report these actions, the employee will be subject to disciplinary action up to and including termination.

E. Disciplinary Action

1. If investigation and due process procedures determine that an employee has committed offender abuse or mistreatment, that employee shall be subject to discipline as outlined in DOC 1.3.1 Human Resources Policy and Personnel Manual.
2. Employees who are terminated for abuse or mistreatment shall not be eligible for re-employment into any position within the Department of Corrections.
3. A person convicted of the offense of mistreating offenders shall be removed from office or employment and may be subject to the sanctions per 45-5-204, MCA.

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F. Guidelines

All Youth Community Corrections Bureau staff will make all reasonable efforts to ensure that clients will:

1. Be free from physical abuse or attack, humiliation, and psychological abuse.
2. Live in an environment designed to maximize individual security, privacy, and dignity.
3. Not be subjected to verbal harassment, name-calling, unusual punishment, humiliation, mental abuse, or punitive interference with the daily functions of living.

Law and ACA standards prohibit as sanctions: corporal punishment or any other punishment designed to cause physical pain, contempt, or ridicule, including wearing of special clothing or insignia; restriction of diet; alteration of regular sleeping patterns; imposition of arduous physical labor; imposition of a rule of silence.

Physical contact with youth is prohibited except when necessary (i.e., use of force, medical exams, appropriate searches conducted by policy guidelines, etc.). Inappropriate contact includes horseplay. In keeping with this policy, it is a requirement that staff respect the individual space of each individual. Violations of this policy may result in termination of employment with the Department.

V. CLOSING:

Questions concerning this procedure shall be addressed to the Youth Community Corrections Bureau Chief.